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Mark A. Daeschel

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EXAMINER

ASD/ODL, MOHAMMAD REZA

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

***Response to Arguments***

Applicant's argument filed on 07/21/08 have been fully considered but they are not persuasive.

Regarding the argument that the date of Dietze's article is old, this reference makes it clear that antibacterial of properties wine, and wine related product, are well known for a long time. Therefore, in response to applicant's argument based upon the age of the references, contentions that the reference patents are old are not impressive absent a showing that the art tried and failed to solve the same problem notwithstanding its presumed knowledge of the references. See *In re Wright*, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, there is no indication for lack, or absence, of combinability of Shatila and Kooistra with Dietze. Indeed, use of sulfur compounds in wine products, as preservative, and can be seen on the labels of wine bottles in the market. Dietze meets the limitation of claim 2, as argued by applicant, Dietze uses various wines and there are no critical differences appear to exist between these wines, in terms of their anti-bacterial effects. The only relative difference is due to their alcohol contents.

### ***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. M. Reza Asdjodi whose telephone number is (571)270-3295. The examiner can normally be reached on Monday-Friday 8:00-5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Eashoo can be reached on 571-272-1197. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark Eashoo, Ph.D./  
Supervisory Patent Examiner, Art Unit 1796  
4-Aug-08

/M. R. A./  
Examiner, Art Unit 1796  
07/28/08